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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixteenth session

SUMMARY RECORD OF THE 19th MEETING

Held at the Palais des Nations, Geneva,
on 12 May 1997, at 3 p.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 3.10 p.m.

GENERAL DISCUSSION: REVISION OF THE COMMITTEE'S REVISED GENERAL GUIDELINES (agenda item 8) (continued)

1. The CHAIRPERSON said that he had circulated statistical information which indicated that the Committee on Economic, Social and Cultural Rights devoted more of its time to examining reports than any other treaty body. Proceeding at its current pace, it would take seven and a half years to consider all the overdue reports, assuming that they had all been submitted. It would take the Committee two years to deal with the 22 reports that were available, at a rate of 5 reports per session. Although it had been agreed previously that five reports and one non-reporting country would be considered at each session, prompt attention would need to be given to submissions from States parties such as Canada and Israel which were under pressure to report. Consequently it might be necessary to increase to seven the number of reports considered at each session. The simplest solution would be to propose to the Economic and Social Council that the Committee meet three times a year or, alternatively, to consider more reports at each session. He did not think it possible to consider more than seven reports during a session, unless the Committee's method of work was altered.

2. He had earlier suggested another approach involving identification in each report of four major issues for further discussion. The time devoted to any one country might then be reduced from nine hours to six hours. However, if the Committee were to draw up such a list of issues, replacing the current practice of reacting to a report, it would have to work systematically through the entire list of States parties, which would increase the number of reports to be considered and, consequently, the work of the pre-session working group. The backlog of countries awaiting consideration of their reports would also increase.

3. Mr. AHMED said it was regrettable that reports were not made available to the Committee earlier. The pre-session working group should receive better information from the secretariat and the NGOs; it would then be able to formulate more specific questions to be answered by national delegations, which should themselves be better informed of the Committee's particular concerns. The guidelines should make it clear that the Committee was interested in new national legislation insofar as it revealed the direction in which the State party was moving, but that its main interest was in learning the extent to which the objectives of the legislation had been achieved.

4. The Committee should explain that it wished to dispense with unnecessary dialogue and avoid frustration and confrontation. The guidelines might specify that each delegation was allowed 30 minutes for its introductory remarks, which could be followed by a maximum of eight or nine three-minute questions from members of the Committee. The delegation would then be invited to answer them in a maximum of 20 minutes and a little over an hour would then be available for general discussion. The following meeting would devote equal time to each of the 15 articles of the Covenant and a maximum of 10 concise questions could be asked by members of the Committee, to which the delegation would respond. It might be possible on that basis to consider six reports at each session, or a total of 12 per year.

5. The CHAIRPERSON said that Mr. Ahmed's proposal would ensure greater procedural discipline, but with a loss of spontaneity. The need for more targeted action by the Committee would still not be addressed.

6. Mr. GRISSA suggested that the Committee's concluding observations should inform States parties of the areas that had not been satisfactorily addressed, and should request that the next report be devoted solely to describing subsequent improvements. The resulting periodic reports would be shorter, and confined to specific issues. He considered that too much time had been devoted in the past to articles 1 to 5, when greater attention should be devoted to articles 6 to 15.

7. Mr. SADI urged caution in attempting to reduce the backlog of reports. He feared that the quality of the dialogue might be sacrificed in the interest of considering a greater number of reports. It was regrettable, but seemingly unavoidable, that reports were frequently obsolete by the time the Committee came to consider them. A possible solution might be to hold additional ad hoc sessions or extended meetings.

8. Mrs. JIMENEZ BUTRAGUEÑO suggested that the Committee's concluding observations should focus on the practical application of its proposals. She was surprised that there had been no response to her proposed amendments to the revised general guidelines (E/C.12/1991/1). The latter should inform delegations that their introductory statement must not exceed a maximum duration, and the members of the Committee should endeavour to exercise self-discipline during the remaining time available for the consideration of the report.

9. The CHAIRPERSON suggested that Mrs. Jimenez Butragueño's proposals might be considered once discussion of the guidelines was concluded.

10. Mr. TEXIER said that it might not be realistic to devote equal time to each article, given that their scope and complexity varied considerably. There had been a consensus on the idea of identifying three or four issues for discussion and the pre-session working group would therefore be obliged to alter its working methods. Consideration might be given to the possibility of designating in advance six experts, each one of whom would ask one particular question. He considered it important not to ignore the positive aspects of a State party's implementation record.

11. Mr. THAPALIA said that he could not support any proposal to focus in priority on particular articles of the Covenant on the ground of their topicality. The right to self-determination was still a contentious and pressing issue in many parts of the world, but he questioned whether it was a proper topic for discussion by a body primarily concerned with economic, social and cultural rights. In his view the Committee should accord greater attention to the rights of indigenous peoples and to the problem of forced evictions.

12. He was concerned that there was a lack of communication between the Committee and States parties. If developing countries in particular were given more information and assistance during the preparation of their reports, a more fruitful dialogue with the Committee would then be possible.

13. Mrs. JIMENEZ BUTRAGUEÑO said that the Committee's work during the session would have been facilitated f all the reporting States had provided in advance written answers to the points raised in the Committee's list of issues. That requirement should be stated more clearly in the instructions sent to States parties with the list of issues.

14. Mr. WIMER expressed concern at the backlog of reports awaiting consideration by the Committee. Some 10 to 15 years might well elapse between the examination of initial and periodic reports.

15. Mr. MARCHAN ROMERO said that the Committee must also examine the manner in which its concluding observations were drafted. They were at present so vague and diffuse that it was difficult to determine from them whether States parties were fulfilling their obligations. That was perhaps one reason why the Committee had a lower public profile than other human rights bodies. While there was a need for balance, it must be made clear in the concluding observations that some countries had made greater progress than others with regard to the observance of economic, social and cultural rights.

16. The CHAIRPERSON said that the States parties were currently asked to address every issue identified in the reporting guidelines. No country could provide detailed information on every point, however, and the Committee therefore had to confine itself to making concluding observations of a very general character. He had therefor proposed that the pre-sessional working group should identify a limited number of key issues on which a report would be requested from the State party concerned. That procedure would enable the Committee to focus on questions of particular concern and to pursue those matters unrelentingly when delegations gave evasive replies. There had previously appeared to be broad support for the introduction of such a procedure, but certain members of the Committee were now proposing ways of improving the existing system.

17. Mr. GRISSA said that the division of issues into fundamental questions and those of secondary importance would be a somewhat arbitrary procedure.

18. The CHAIRPERSON observed that the Human Rights Committee had successfully employed such a procedure. He suggested that, in view of the lack of consensus on the matter, it should be pursued in an informal working group with a view to arriving at a proposal for which there was general support, and that the secretariat should be asked to draft a document outlining the different views that had been expressed.

19. It was so decided

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 5) (continued)

Draft general comment (continued) (E/C.12/1997/4)

20. The CHAIRPERSON invited the Committee to resume its consideration of the draft general comment on the right to housing (art. 11, para. 1 of the Covenant): forced evictions, which had been revised by Mr. Pillay to incorporate the changes proposed by the Committee at its fourth meeting.

21. Mr. PILLAY read out a number of necessary editorial corrections to the English text.

Paragraph 1

22. Mr. CEVILLE said that in the Spanish version "evictions" had been translated as "desalojamientos", whereas it had been agreed that the most accurate rendering was "desalojos".

23. Mrs. JIMENEZ BUTRAGUEÑO said that, while the English text referred to "the obligations of States Parties" in line 6, in line 8 of the Spanish version that was translated as "las obligaciones del gobierno" (the obligations of the Government). It was States Parties, rather than Governments, which ratified the Covenant.

24. Mr. WIMER said that the Spanish version would require considerable revision to bring it into line with the English and French versions. He had made a list of the necessary changes which he would transmit to the secretariat.

25. Mr. TEXIER requested an editorial change in the French version.

26. The CHAIRPERSON said that the necessary corrections to the texts would be made.

Paragraph 2

27. Mrs. BONOAN-DANDAN suggested that the paragraph should mention the Habitat Agenda (United Nations Conference on Human Settlements, Istanbul, 1996), which was the most recent pronouncement by the international community on the question of forced evictions.

28. Mr. CEVILLE said that, for clarity, the Vancouver Declaration and the 1988 Global Strategy should be referred to in separate sentences.

29. The CHAIRPERSON said that the text would be amended to incorporate those suggestions.

30. Mr. WIMER asked why the word "hogares" (homes) was used in the eleventh line of the Spanish version. He believed there had been agreement to use the word "viviendas".

31. The CHAIRPERSON pointed out that the passage referred to was a quotation from Agenda 21 of the Rio Earth Summit. It was true that the word "viviendas" was preferred in the Committee's own documents.

Paragraph 3

32. Mr. AHMED said that, since forced evictions were illegal under both domestic and international law, the word "international" in line 2 should be deleted.

33. Mr. RIEDEL said that, while the purpose of paragraph 3 was to indicate clearly what was meant by "forced evictions", the enumeration of a series of arguments both for and against the use of an alternative term was likely to create confusion. He proposed that the third, fourth and fifth sentences of the paragraph should be deleted.

34. The CHAIRPERSON, supported by Mr. SADI said that, as the paragraph stated, the use of the term "forced evictions" was problematic. It was necessary to account for its use in preference to another term. The draft general comment was intended for use by courts, public authorities and non-governmental organizations, as well as by States Parties, and it must therefore be comprehensible to the layman, even if that meant going into considerable detail.

35. Mrs. JIMENEZ BUTRAGUEÑO proposed that, in the second sentence, the words "The intention is to convey ...", should be replaced by "This expression seeks to convey ...".

36. It was so decided.

37. Mr. MARCHAN ROMERO drew attention to an error in the Spanish version of the second sentence.

38. Mr. GRISSA, referring to the third sentence, said that he found the term "forced evictions" unsatisfactory because it ignored the additional aspect of possible illegality.

39. The CHAIRPERSON said that the term had become established and no other could now be used. He agreed, however, that it was a strange term because some forced evictions were nonetheless perfectly legal.

40. Mr. AHMED said that the meaning of the word "protection" in the third sentence was unclear.

41. The CHAIRPERSON, supported by Mr. PILLAY, said that the point being made in the sentence was that the term "illegal evictions" was unsatisfactory because evictions could be carried out in accordance with the law, but the law itself might not adequately protect the right to housing and thus would not be in conformity with the Covenant.

42. Mr. AHMED suggested the replacement of the words "adequate protection and conforms with the Covenant" by the words "legal justification for evictions and is not in contradiction with the Covenant".

43. Mr. PILLAY said that what was important was protection against evictions rather than justification for them.

44. The CHAIRPERSON suggested the insertion of the phrase "of the right to housing" between the words "adequate protection" and "and conforms".

45. Mr. GRISSA suggested the deletion of the fifth sentence, because it made a value judgement.

46. The CHAIRPERSON said that in the fifth sentence the Committee was not making a value judgement but reporting a fact: it was saying that the international community had opted to refer to "forced evictions" because that expression had become a term of art used by the Commission on Human Rights and other bodies.

47. Mr. ADEKUOYE proposed that, in the last sentence, the words "access to" should be inserted after the words "provision of", because some persons might not be guaranteed access to the legal or other protection provided.

48. It was so decided.

49. Mrs. BONOAN-DANDAN proposed that the word "their" before the word "homes" in the last sentence should be replaced by "the".

50. It was so decided.

51. Mr. WIMER, supported by Mr. TEXIER, proposed that the expression "and/or" in the same sentence should be replaced by "and".

52. It was so decided.

53. Mr. TEXIER proposed that the word "homes" in that sentence should be replaced by the word "housing", the term customarily used by the Committee.

54. It was so decided.

Paragraph 4

55. Mrs. BONOAN-DANDAN proposed that the phrase "poses serious problems both in" in the first sentence should be replaced by "affects persons in both".

56. It was so decided.

57. Mrs. JIMENEZ BUTRAGUEÑO proposed that the phrase "also contributes directly to the denial of the enjoyment" in the last sentence should be replaced by "may also result in violations".

58. It was so decided.

59. Mr. GRISSA said that he found the specific reference to civil and political rights at the end of the last sentence unnecessary. It would be sufficient simply to refer to "other human rights".

60. Mr. SADI said that the Committee might be trespassing on the province of another human rights body if it made a specific pronouncement on civil and political rights, which were not within its own mandate. A general reference to other human rights would be preferable.

61. The CHAIRPERSON said that references to rights under another Covenant did not purport to interpret that Covenant. The original intent of the last sentence of paragraph 4 had been to show that economic, social and cultural rights did not exist in isolation but were related to civil and political rights.

62. Mr. RIEDL, pointed out that paragraph 7 also referred to the interrelation of the two kinds of rights. In his view examples of both should be given in paragraph 4.

63. Mr. TEXIER, supported by Mr. ADEKUOYE, Mr. RIEDL, Mr. SADI and Mr. AHMED, said that one or two examples of civil and political rights should be included at the end of paragraph 4. He much preferred the earlier, perhaps longer, but more explanatory version of the paragraph.

64. The CHAIRPERSON recalled that, after a first reading at a previous session, it had been decided that Mr. Marchan Romero and Mr. Rattray would formulate a shorter compromise text, and that had been the basis for Mr. Pillay's present redrafting. He agreed that in the process the paragraph had been radically diminished.

65. Mrs. BONOAN-DANDAN proposed the addition, at the end of the last sentence, of the following wording: ",such as the right to life, the right to privacy and respect for the home, the right to the peaceful enjoyment of possessions and the right to security of the person".

66. The proposal was adopted.

Paragraph 5

67. The CHAIRPERSON proposed that the third and fourth sentences should be linked by using the formula "... the Covenant is required so that any limitations imposed ...". The words "Thus, in accordance with that Article," would be deleted.

68. It was so decided.

Paragraph 6

69. Mr. MARCHAN ROMERO and Mr. CEVILLE suggested minor drafting changes in the Spanish version of the paragraph.

70. Mr. GRISSA, supported by Mr. WIMER, observed that massive population displacements resulted from international armed conflicts, internal strife and communal or ethnic violence, not from forced evictions. He proposed the deletion of the first sentence.

71. Mr. SADI said that he believed the first sentence should not be deleted and drew attention to paragraph 11, which also related the displacement of civilian populations to forced evictions.

72. Mr. GRISSA said that the two matters must be dealt with separately, because they were different in themselves and in the fact that forced evictions, as defined in paragraph 3, involved direct State action in expelling people from their homes. In the context of generalized violence in a country, on the other hand, the State was overtaken by events, which forced people to flee of their own accord.

73. Mr. TEXIER said that he thought Mr. Grissa was reading too much into the definition of forced evictions, which were nowhere said to be the direct result of action by the State. There were, of course, clear instances in which a State did expel whole populations, as Israel was doing with the Palestinian people.

74. The CHAIRPERSON, supported by Mr. AHMED and Mr. GRISSA, proposed that paragraph 6 should be divided into two paragraphs. A new paragraph 6 would convey the idea that, in situations of violence, there might be massive movements of populations, including cases where people were gratuitously displaced by groups taking advantage of the situation. It would read: "Many instances of forced evictions are associated with violence, such as those which may occur without justification in the context of international armed conflicts, internal strife, and communal or ethnic violence."

75. The remainder of the present paragraph 6 would become a new paragraph 6 bis, pending final renumbering, and would begin with the sentence, "Other instances of forced evictions occur in the name of development.".

76. It was so decided.

77. Mrs. BONOAN-DANDAN proposed that, in the second sentence of paragraph 6 bis, the phrase "conflict over land rights" should be inserted before the words "development and infrastructure projects".

78. It was so decided.

79. Mr. TEXIER, supported by Mrs. JIMENEZ BUTRAGUEÑO, Mr. WIMER and Mr. GRISSA, said that speculation in land should again be mentioned, as an instance of forced eviction occurring in the name of development.

80. Mr. RIEDL said that he preferred the more concise and careful wording of the original paragraph 6, which covered instances of eviction as a result of housing speculation.

81. The CHAIRPERSON said that some speculation was inherent in all purchases of land. The concept of speculation would have to be qualified in some way if it was to be mentioned.

82. Mr. PILLAY suggested that the words ", the unbridled speculation in land" should be inserted after the words "agricultural purposes" in the last sentence. The word "unreasonable" might be substituted for the word "unbridled" if the Committee so preferred.

Paragraph 7

83. Mr. WIMER said that the words "desalojamientos forzosos" in the ninth and eleventh lines of the Spanish version of the paragraph made no sense without the addition of the word "ilegales" in each instance because, in that precise context, the prohibition applied only when convictions were illegal.

84. Mr. PILLAY said there was no reason to specify "illegal" evictions because the Committee had accepted that, for the purposes of the general comment, forced evictions were defined as the permanent or temporary removal, against their will, of individuals, families and communities.

85. The CHAIRPERSON, inviting the Committee to comment on those suggestions, recalled that it had earlier been decided that the term "forced eviction" was used as a particular term of art. He therefore believed it would be odd to introduce the expression "illegal evictions" which had earlier been discarded as inappropriate.

86. Mr. GRISSA said that he supported Mr. Wimer's remarks.

87. The CHAIRPERSON said that "forced evictions" should perhaps be placed between inverted commas or, alternatively, the formula "... forced evictions, as defined in paragraph 3 above", should be used.

88. Mr. WIMER said he disagreed with the Chairperson's suggestion because the text made no sense if read in isolation. He was not opposed to the use of the term "forced eviction" anywhere else in the general comment, but he insisted that in paragraph 7 it was absolutely necessary to qualify the evictions as illegal.

89. Mr. CEAUSU suggested that the fourth sentence should begin with the phrase: "Since forced evictions are illegal ...".

90. The CHAIRPERSON proposed the following modification of the phrase suggested by Mr. Ceausu: "Since forced evictions, as defined in paragraph 3 above, are illegal ...".

91. Mr. AHMED recalled that the discussion of the definition in paragraph 3 had been inconclusive and the Committee had decided to resume it in due course. States parties could not be denied the right to execute legally justifiable forced evictions; the Committee's concern was with illegal forced evictions.

92. The CHAIRPERSON agreed with Mr. Ahmed. The Committee was opposed to forced evictions, that is, evictions which involved resort to force and which, although legal, were incompatible with the Covenant. In his view, agreement on paragraph 3 was imminent.

93. Mr. GRISSA said that he detected a contradiction, because the use of force in order to enforce a legal principle was legal. Not all forced evictions were illegal. The definition given in paragraph 3 was in his view unsatisfactory.

94. The CHAIRPERSON said that paragraph 7 appeared to require substantial redrafting.

95. Mr. TEXIER said that in spite of its imperfections, the definition in paragraph 3 should be used as a guide for the remainder of the general comment. He suggested that the first clause of the fourth sentence should be deleted and that the sentence should begin as follows, "The State itself should refrain from indulging in forced evictions, as defined in paragraph 3 above, and ensure that the law is enforced, ...".

96. The CHAIRPERSON said that it might be useful to add, after the fourth sentence proposed by Mr. Texier, a new sentence to address the crucial question which remained. That new sentence would read "This in no way excludes resort to the use of force in accordance with paragraph 12 below".

97. Mr. AHMED said he wondered why the committee was reluctant to use, in paragraph 7, the phrase "in cases envisaged by the law", which appeared in paragraph 12.

98. The CHAIRPERSON said the isolated citation of the phrase to which Mr. Ahmed referred would be a distortion because, taken out of context, it would imply that any law could authorize the use of force.

99. In the absence of objection, he would take it that his proposal was accepted.

100. It was so decided.

Paragraph 8

101. Mr. PILLAY pointed out that, in the last sentence, the word "in" before "compatible" should be deleted. He also suggested the addition of the words "or policy" after the word "legislation" in the same sentence, which should now read: "It is therefore appropriate for the States parties to review any existing legislation or policy to ensure that it is compatible with the requirements of the right to adequate housing and to repeal or amend any offending legislation or policy." That change was necessary, in his opinion, because reference was made earlier in the paragraph to "legislative and other measures".

102. Mrs. BONOAN-DANDAN suggested the following rewording of the text proposed by Mr. Pillay: "States parties should therefore review relevant legislation or policy to ensure that these are compatible with obligations arising from the right to adequate housing and to repeal and amend any legislation or policy which are consistent with the Covenant."

103. Mr. GRISSA, referring to section (a) in the third sentence, asked whether an illegal occupant was to be given the "greatest possible security".

104. Mr. RIEDEL suggested that since the contents of section (a) and of section (c) were closely related, the present section (b) should be placed after section (c).

105. Mr. TEXIER said that he found the wording of the paragraph sufficiently general in character. This issue of legality was a matter for the domestic courts.

106. Mr. GRISSA pointed out that the paragraph referred to legislative measures, but said such measures might include legal sanctions which condoned illegal occupation. In his opinion it was a dangerous and unacceptable situation.

107. The CHAIRPERSON said that further discussion of paragraph 8 would be necessary.

The meeting rose at 6 p.m.